

eligibility. Material relationships fall into two categories: impermissible and attributable. An applicant or licensee has an “impermissible material relationship” when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis.¹¹⁷

88. An applicant or licensee has an “attributable material relationship” when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant’s or licensee’s (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.¹¹⁸

89. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships would not alone cause the Commission to examine a designated entity’s ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant’s or licensee’s designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant’s or licensee’s designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.¹¹⁹

90. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant if certain specified conditions are met.¹²⁰ The Commission has also clarified that, in calculating an applicant’s gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.¹²¹

¹¹⁷ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(A), 1.2111(d).

¹¹⁸ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(B), 1.2111(d).

¹¹⁹ 47 C.F.R. § 1.2110(b)(3)(iv)(C); *Designated Entity Second Report and Order*, 21 FCC Rcd at 4764 ¶¶ 28-29; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6713-14 ¶¶ 27-29; but see the additional grandfathering provision in section 1.2110(b)(3)(iv)(C)(2) for the material relationships of those entities that are an applicant’s affiliates based solely on section 1.2110(c)(5)(i)(C) of the Commission’s rules. 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2); *Designated Entity Second Report and Order*, 21 FCC Rcd at 4764-65 ¶ 30.

¹²⁰ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-194 ¶¶ 10-18; *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

¹²¹ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10185-186 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant.

91. A consortium of small businesses or very small businesses is a “conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business [or] very small business as those terms are defined in the service-specific rules.”¹²² Thus, each member of a consortium of small or very small businesses that applies to participate in Auction 73 must individually meet the definition of small business or very small business adopted by the Commission for the 700 MHz Band.¹²³ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium’s eligibility as a small business or very small business,¹²⁴ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹²⁵

F. Provisions Regarding Former and Current Defaulters

92. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,¹²⁶ have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.¹²⁷ In addition, each applicant must certify under penalty of perjury on its short-form application that, as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.¹²⁸ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application in the FCC Auction System. Accordingly, applicants seeking licenses that may be offered in Auction 76 will be required to make these statements and certifications in both their short-form application for Auction 73 and their abbreviated Auction 76 application.

93. “Former defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auctions 73 and 76, provided that they are otherwise qualified. However, as discussed in Section III.D.3. below, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.¹²⁹

¹²² 47 C.F.R. § 1.2110(c)(6).

¹²³ 47 C.F.R. §§ 27.502 and 27.702.

¹²⁴ 47 C.F.R. § 1.2110(b)(3)(i).

¹²⁵ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-912 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and sections 1.2107(g) and 1.2110(b)(3) of the Commission’s rules to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹²⁶ 47 C.F.R. § 1.2110.

¹²⁷ 47 C.F.R. § 1.2105(a)(2)(xi); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142.

¹²⁸ 47 C.F.R. § 1.2105(a)(2)(x); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

¹²⁹ 47 C.F.R. § 1.2106(a).

94. "Current defaulters" — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications — are not eligible to bid in either Auction 73 or Auction 76.¹³⁰

95. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹³¹ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹³² Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹³³

96. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹³⁴ Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.¹³⁵ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to

¹³⁰ 47 C.F.R. §§ 1.2105(a)(2)(x) and 1.2105(b)(1); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n.142 ("If any one of an applicant's controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.")

¹³¹ "WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, 19 FCC Rcd 21920 (2004) ("Auction Default Disclosure Public Notice"). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹³² Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at: <http://wireless.fcc.gov/auctions/58/>.

¹³³ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. *See* 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹³⁴ Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("Debt Collection Report and Order").

¹³⁵ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

comply with the default and delinquency disclosure requirements of Section 1.2105.¹³⁶ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

97. Prospective applicants should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹³⁷ and such review may result in the dismissal of a winning bidder's long-form application.¹³⁸

G. Other Information

98. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹³⁹ may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹⁴⁰

H. Minor Modifications to Short-Form Applications (FCC Form 175)

99. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline.¹⁴¹ Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's FCC Form 175, which will consequently be dismissed.¹⁴²

100. Applicants are, however, permitted to make only minor changes to their FCC Form 175 after the short-form application deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

101. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its Auction 73 short-form application using the FCC Auction System. Applicants should not make changes to short-form applications associated with Auction 76. Applicants are reminded to click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

¹³⁶ *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

¹³⁷ *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

¹³⁸ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹³⁹ 47 C.F.R. § 1.2110(c)(3).

¹⁴⁰ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

¹⁴¹ 47 C.F.R. § 1.2105(b).

¹⁴² We reiterate that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the anti-collusion rule until the down-payment deadline, which will occur after the auction or the contingent subsequent auction.

102. In addition, during those periods outside of the initial and resubmission filing windows (i.e., when an applicant cannot electronically update its FCC Form 175), an applicant should submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: auction73@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant (e.g., "RE: Changes to Auction 73 Short-Form Application of ABC Corp."), and should not reference Auction 76. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

103. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

104. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹⁴³ Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a "major amendment" as defined by Section 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹⁴⁴

105. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their short-form applications, such as deleting or adding authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: auction73@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

106. Applicants must **not** submit application-specific material through ECFS.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — November 19, 2007

107. On Monday, November 19, 2007, the FCC will sponsor a free seminar for parties interested in participating in Auction 73 at the FCC headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the 700 MHz Band service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to Auctions 73 and 76.

108. To register, please provide the information listed on Attachment J by fax, e-mail or telephone to the FCC by Thursday, November 15, 2007.

¹⁴³ 47 C.F.R. § 1.65.

¹⁴⁴ 47 C.F.R. § 1.2105(b)(2).

109. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 73 web page at <http://wireless.fcc.gov/auctions/73/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

B. Short-Form Applications (FCC Form 175) — Due Prior to 6:00 p.m. ET on December 3, 2007

110. In order to be eligible to bid in Auction 73 or Auction 76, applicants must first follow the procedures set forth in Attachments D and E to this Public Notice to submit an FCC Form 175 application electronically via the FCC Auction System.¹⁴⁵ This application must be received at the Commission prior to 6:00 p.m. ET on December 3, 2007. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.¹⁴⁶

111. Applications may generally be filed at any time beginning at noon ET on November 19, 2007, and the filing window will close prior to 6:00 p.m. ET on December 3, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 3, 2007.

112. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachments D and E. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

113. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

114. As described more fully in the Commission's rules, after the December 3, 2007, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).¹⁴⁷ Accordingly, as noted above, applicants interested in participating in any potential contingent subsequent bidding must have selected license(s) available in the initial bidding as well as licenses that may be available in contingent subsequent bidding, including alternative licenses, by the deadline for submitting their application to participate in Auction 73. FCC personnel will communicate regarding a short-form application only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or

¹⁴⁵ 47 C.F.R. § 12.105(a).

¹⁴⁶ See Section III.D. "Upfront Payments — Due December 28, 2007," below.

¹⁴⁷ 47 C.F.R. § 1.2105(b); see also *Two Way Radio of Carolina, Inc.*, *Memorandum Opinion and Order*, 14 FCC Red 12035 (1999).

contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.¹⁴⁸

D. Upfront Payments — Due December 28, 2007

115. In order to be eligible to bid in Auction 73 and any contingent subsequent auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Only applicants that become qualified bidders in Auction 73, by, among other things, making upfront payments to be eligible to bid in Auction 73, will be eligible to participate in any contingent subsequent auction. However, as described in Section V of this Public Notice, qualified bidders in Auction 73 will be permitted to make additional upfront payments with respect to licenses being offered in any contingent subsequent auction at a later date. After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments for Auction 73 must be received in the proper account at Mellon Bank by 6:00 p.m. ET on December 28, 2007.**

1. Making Upfront Payments by Wire Transfer

116. Wire transfer payments for Auction 73 must be received by 6:00 p.m. ET on December 28, 2007.¹⁴⁹ **No other payment method is acceptable.**¹⁵⁰ To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh
500 Ross St.
Pittsburgh, PA 15262

BENEFICIARY: FCC/Account # 910-1174

Originating Bank Information (OBI Field): (Skip one space between each information item)
"AUCTIONPAY"

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A73U")

FCC CODE 1: (same as FCC Form 159, block 28A: "73")

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO. # 358405

NOTE: The BNF and Lockbox number are specific to the upfront payments for Auction 73. Do not use BNF or Lockbox numbers from previous auctions. Wire transfer information for Auction 76 will be made available in a future public notice.

117. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at

¹⁴⁸ In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.E., below.

¹⁴⁹ A wire transfer is a transaction that you initiate through your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. Additional information on wire transfers is available on the Commission's web site at <http://www.fcc.gov/fees/wiretran.html>.

¹⁵⁰ The Commission will not accept checks, credit cards, or ACH payments.

(412) 209-6045. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction 73.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account before the deadline.¹⁵¹ **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

118. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 73 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment as instructed by the December 28, 2007, deadline will result in dismissal of the application and disqualification from participation in the auction as well as ineligibility for participation in any contingent subsequent bidding for 700 MHz Band licenses.

2. FCC Form 159

119. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment.¹⁵² Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment F to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Upfront Payments and Bidding Eligibility

120. In the *Part 1 Order*, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.¹⁵³ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that applicants that are former defaulters be required to pay upfront payments 50 percent greater than non-former defaulters.¹⁵⁴ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.¹⁵⁵

¹⁵¹ Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (2003).

¹⁵² As noted below, bidders will be afforded the opportunity to purchase additional bidding eligibility for the contingent subsequent auction by supplementing their upfront payments pursuant to the procedures described below. See Section V. “Auction 76,” below.

¹⁵³ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

¹⁵⁴ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see Section II.F. “Provisions Regarding Former and Current Defaulters,” above.

¹⁵⁵ 47 C.F.R. § 1.2110(c).

121. Upfront payments help deter frivolous or insincere bidding. In addition, upfront payments provide the Commission with a source of funds in the event that the bidder incurs liability during the auction. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid individually or as part of a package.

122. In the *700 MHz Auction Public Notice*, the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹⁵⁶ In addition, consistent with the Commission's direction in the *700 MHz Second Report and Order*, the Bureau proposed that qualified bidders in Auction 73 would have an opportunity to submit additional upfront payments to obtain bidding eligibility for licenses in any contingent subsequent auction (Auction 76).¹⁵⁷

123. Under the Bureau's proposal, in order to bid on a particular license or package, qualified bidders must have selected the license(s) on FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or package. For a package, the bidding units are calculated by adding together the bidding units of the individual licenses that make up the package. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 73, or else the applicant will not be eligible to participate in Auction 73 or in Auction 76.** An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids (via bids on licenses and/or packages) at any given time in Auction 73.¹⁵⁸ If contingent subsequent bidding is necessary, qualified bidders for Auction 73 will be given an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76.

124. In the *700 MHz Auction Public Notice*, the Bureau proposed to calculate upfront payments as follows:¹⁵⁹

- For licenses covering CMAs in the 50 states in which the licenses offered in Auction 66 were sold, \$0.05 per MHz per population (MHz-pop) for Metropolitan Statistical Area (MSA) licenses and \$0.03/MHz-pop for Rural Service Area (RSA) licenses
- For licenses covering EAs in the 50 states in which the corresponding licenses in both EA blocks offered in Auction 66 were sold, the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA
- For licenses covering REAGs in the 50 states in which the corresponding licenses in all three REAG blocks offered in Auction 66 were sold, the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA
- For licenses covering geographic areas for which an Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

¹⁵⁶ *700 MHz Auction Public Notice* at ¶ 33.

¹⁵⁷ *Id.* at ¶ 100. See also *700 MHz Second Report and Order* at ¶ 316.

¹⁵⁸ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. "Provisionally Winning Bids," below.

¹⁵⁹ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using our standard rounding procedure.¹⁶⁰

125. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *700 MHz Auction Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's initial bidding eligibility. Therefore, we adopt the upfront payments and bidding units for each license in Auction 73 as proposed and set forth in Attachment A of this Public Notice.¹⁶¹

126. In calculating its upfront payment amount, an applicant interested in bidding only on individual licenses should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round in Auction 73, and submit an upfront payment amount covering that number of bidding units.¹⁶² Applicants interested in bidding on packages should determine their upfront payment amount by calculating the sum of bidding units associated with each discrete license they wish to include in new bids (package or individual bids) or have included in provisionally winning bids in any single round. The bidding units associated with a given license, even if the license is included in more than one bid, will be counted only once per bidder per round. In order to make this calculation, an applicant should add together the upfront payments for all licenses comprising all combinations of licenses and packages of licenses on which it seeks to be active in any given round. If a bidder has enough eligibility to bid on certain licenses, it can place bids on the licenses individually *and* on packages containing those licenses without needing additional eligibility. For example, if licenses A, B, and C each have 10,000 bidding units, and a bidder wishes in a single round to be able to bid on licenses A, B, and C individually and on packages AB and ABC, the bidder needs 30,000 bidding units of eligibility. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility for Auction 73 after the upfront payment deadline.**

¹⁶⁰ Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

¹⁶¹ The upfront payment for any of the pre-defined packages of C Block licenses will be the sum of the upfront payments of the licenses included in the specific package.

¹⁶² In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission license or delinquent on non-tax debt owed to a Federal agency (see 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses it selected on its FCC Form 175.

Example: Upfront Payments and Bidding Flexibility			
License	Market Name	Bidding Units	Upfront Payment
WU-REA009-C	Guam, Northern Mariana Islands	49,000	\$49,000
WU-REA011-C	American Samoa	13,000	\$13,000

If a bidder wishes to bid on both licenses in a round either individually or as one of the available packages, it must have selected both on its FCC Form 175 and purchased at least 62,000 bidding units (49,000 + 13,000). If a bidder only wishes to bid on one, but not both, purchasing 49,000 bidding units would meet the eligibility requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 13,000 bidding units, it would have enough eligibility for the American Samoa license but not for the Guam, Northern Mariana Islands license.

If a bidder has at least 62,000 bidding units, it has enough eligibility to bid on the package of the two licenses in this example (the “Pacific” package) instead of or in addition to bidding on these licenses individually. This will be explained further below.¹⁶³

127. We reiterate that, in the event it is necessary to conduct Auction 76, bidders will have an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76. The instructions and deadline for doing so would be announced within five business days after the end of bidding in Auction 73.

128. **For Auction 73 and any contingent subsequent auction, “former defaulters” must calculate their upfront payment for all licenses and packages by multiplying the number of bidding units on which they wish to be active by 1.5.**¹⁶⁴ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments

129. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should **not** be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. Eligibility for refunds is discussed in Section VI.H., below. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
 ABA Number
 Address of Bank
 Contact and Phone Number

¹⁶³ See Section IV.A.1. “Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses” and Section IV.A.3. “Eligibility and Activity Rules,” below.

¹⁶⁴ 47 C.F.R. § 1.2106(a).

Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Correspondent Bank (if applicable)
ABA Number
Account Number

E. Auction Registration

130. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction 73. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on license(s) initially offered in Auction 73.

131. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

132. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Tuesday, January 15, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

133. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

F. Remote Electronic Bidding

134. The Commission will conduct Auctions 73 and 76 over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.** Please note that each SecurID® token is tailored to a specific auction; therefore, SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 73. In the event that it is necessary to conduct Auction 76, qualified bidders for Auction 76 will use the same SecurID® tokens as they used for Auction 73.¹⁶⁵

135. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

¹⁶⁵ See Section V. "Auction 76," below.

G. Mock Auction — January 18, 2008

136. All qualified bidders will be eligible to participate in a mock auction on Friday, January 18, 2008. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION 73

137. The first round of bidding for Auction 73 will begin on Thursday, January 24, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction 73 Structure

1. Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses

138. In the *700 MHz Auction Public Notice*, the Bureau proposed using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E Block licenses, while enabling package bidding for C Block licenses using an auction design with hierarchical package bidding ("HPB").¹⁶⁶ An SMR-HPB auction format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses, which, for Auction 73, only include C Block licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Typically, bidding remains open on all licenses until bidding stops on every license, unless an alternative version of the stopping rule is invoked.

139. The *700 MHz Auction Public Notice* proposed pre-defined packages for C Block licenses according to a hierarchical structure. The initial level consists of individual licenses, and the next level consists of non-overlapping packages of those licenses, such that a given license is included only once in each level. The winning set of bids could therefore consist of bids from various levels as long as each license is included in only one winning bid. The Bureau proposed to accept individual bids on C Block licenses for REAGs 1-12 (Level 1) and package bids on the following combinations of C Block REAG licenses (Level 2): (i) REAGs 1-8 (the "50 States" package); (ii) REAGs 10 and 12, comprising Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico (the "Atlantic" package); and (iii) REAGs 9 and 11, comprising the U.S. Pacific territories (the "Pacific" package).

Figure 1: Proposed Package Structure of C Block Licenses

Level 2: Packages	50 States								Atlantic		Pacific	
Level 1: REAG licenses	1	2	3	4	5	6	7	8	10	12	9	11

140. The Bureau also sought comment on alternative levels or alternative ways of packaging licenses within levels. Additionally, the Bureau proposed to conduct the auction using standard SMR procedures for all of the licenses, including the C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding.¹⁶⁷

¹⁶⁶ *700 MHz Auction Public Notice* at ¶ 17.

¹⁶⁷ *Id.* at ¶ 18.

141. The majority of commenters support package bidding for C Block licenses either in general or for the HPB auction format specifically.¹⁶⁸ Some commenters, however, urge the Bureau to abandon package bidding for Auction 73 under the “unforeseen difficulties” exception to the Commission’s directive to use package bidding for the C Block licenses.¹⁶⁹ These parties assert that the SMR-HPB format is too complex, will disadvantage bidders interested in only individual licenses, and will not be fully understood by bidders or implemented by the Bureau in time for the start of the auction.¹⁷⁰ When the Commission directed the Bureau to adopt package bidding for the C Block, it noted that package bidding minimizes exposure risk for applicants whose business plans require the economies of scale that only can be obtained with nationwide operation, but would not preclude the participation of entities wishing to bid on individual licenses.¹⁷¹ The HPB auction format was chosen in part because it mitigates issues inherent in some other package bidding formats that give bidders interested in large packages an advantage over bidders interested in individual licenses. Of course, to the extent that providing bidders the option of package bidding favors those bidders seeking packages over those seeking individual licenses, we note that the same argument could be applied in reverse to the other 1,087 licenses in Auction 73 that bidders will not have the option to package in order to decrease their exposure risk. After review of the record, we conclude that considerations raised in the comments opposing package bidding are not the kinds of “unforeseen difficulties” regarding the feasibility of package bidding for the C Block licenses that the Commission envisioned in the *700 MHz Second Report and Order*.

142. Therefore, we conclude that the SMR format for A, B, E and D Block licenses, and the HPB auction format for the C Block licenses, will best meet the needs of bidders in Auction 73, and therefore adopt them as proposed.¹⁷² As is typical with both formats, bids will be accepted on all individual licenses and on pre-defined packages of licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

143. With regard to the proposed pre-defined packages for C Block licenses, we decline to adopt the alternate packages suggested by two commenters. The 4G Coalition asserts that it sees value in adopting a 12 REAG package or even allowing bidders to choose their own package.¹⁷³ Second, Wrege/Hoffman propose adopting packages of regions larger than REAGs (e.g., East, Midwest, West Coast) and a package of only the lower 48 States.¹⁷⁴ Wrege/Hoffman base its proposal for a lower 48 State package on the premise that prospective nationwide bidders have limited interest in Hawaii and Alaska, and that these states would be better served if they are not included in a “nationwide” package.¹⁷⁵

¹⁶⁸ 4G Comments at 4; Frontline Comments, Attachment at 2-3; Pekec Comments at 1; Space Data Comments at 4-5; Frontline Reply Comments, Attachment at 1.

¹⁶⁹ The Commission directed the Bureau to adopt package bidding for C Block licenses unless “unforeseen difficulties make it impracticable to implement package bidding for the C Block consistent with the goals articulated here.” *700 MHz Second Report and Order* at ¶ 292.

¹⁷⁰ See MetroPCS Comments at 10-13; US Cellular Comments at 2-3; MetroPCS Reply Comments at 13-14; US Cellular Reply Comments at 2-3. See also RTG Reply Comments at 1-2 (supporting notion that there is insufficient time to prepare for package bidding for Auction 73, and that package bidding favors large companies).

¹⁷¹ *700 MHz Second Report and Order*, ¶ 292. The Commission noted that the use of package bidding for C Block licenses facilitates direct competition between competing business plans, without predetermining the outcome or favoring one business plan over the other. *Id.*

¹⁷² As noted in more detail below, if a subsequent auction becomes necessary, we also adopt the SMR format for A, B, E, and D Block licenses, and the HPB format for C1 and C2 Block licenses. See Section V. “Auction 76,” below.

¹⁷³ 4G Coalition Comments at 4.

¹⁷⁴ Wrege/Hoffman Comments at 3.

¹⁷⁵ *Id.*

The State of Hawaii submitted reply comments challenging the assertion that nationwide carriers have little interest in providing coverage to Hawaii, noting several major carriers already do in fact operate in Hawaii.¹⁷⁶ The State of Hawaii also asserts that any “nationwide” package without Hawaii and Alaska unfairly discriminates against these states and its inhabitants, which would not only be inconsistent with the Communications Act, but also with Commission precedent.¹⁷⁷ Wrege/Hoffman also suggest that we eliminate the Atlantic and Pacific packages on the grounds that bidders would not obtain any benefits from bidding on the licenses as packages.¹⁷⁸ We see no disadvantages to including the packages.

144. The Commission adopted package bidding for C Block licenses to reduce the exposure problem that might otherwise inhibit bidders seeking to create a nationwide footprint.¹⁷⁹ At the same time, the Commission directed the Bureau to implement package bidding without imposing disadvantages on parties that wish to bid on individual licenses comprising the nationwide footprint.¹⁸⁰ We find that offering three packages – the 50 States, Atlantic, and Pacific packages – meets this balance by reducing exposure risk of bidders seeking to provide nationwide coverage without disadvantaging those bidders seeking individual licenses. Therefore, we adopt the pre-defined packages as proposed in the *700 MHz Auction Public Notice*.

2. Information Available to Bidders Before and During the Auctions

145. In the *700 MHz Second Report and Order*, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or “limited information”) bidding procedures, regardless of any pre-auction measurement of likely auction competition.¹⁸¹ Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. The Commission therefore directed the Bureau to propose and seek comment on more detailed procedures for employing anonymous bidding for the 700 MHz auction.

146. In the *700 MHz Auction Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders’ license selections on their short-form applications, (2) the amounts of bidders’ upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. In contrast to procedures implemented for anonymous bidding in past auctions,¹⁸² and consistent with the *700 MHz Second Report*

¹⁷⁶ State of Hawaii Comments at 2 (citing Verizon Wireless, Sprint Nextel, T-Mobile, and AT&T Wireless).

¹⁷⁷ *Id.* at 2-4. The State of Hawaii also notes that other provisions facilitate small/regional carrier coverage in its state, citing the adoption of CMA and EA licenses, and the options of partitioning, disaggregation and leasing available to carriers. *Id.* at 5-6.

¹⁷⁸ Wrege/Hoffman Comments at 4.

¹⁷⁹ *700 MHz Second Report and Order* at ¶ 290.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at ¶¶ 8, 274-84.

¹⁸² See, e.g., “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,” *Public Notice*, 21 FCC Rcd 4562, 4600-05 ¶¶ 140-157 (2006) (“*Auction 66 Procedures Public Notice*”); “Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71,” *Public Notice*, DA 07-30, 22 FCC Rcd 433, 463-464 ¶¶ 109-113 (WTB 2007) (“*Auction 71 Procedures Public Notice*”); “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 72,” *Public Notice*, DA 07-514, 22 FCC Rcd 3404, 3433-34 ¶¶ 112-116 (WTB 2007) (“*Auction 72 Procedures Public Notice*”).

and Order, the Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.¹⁸³

147. Commenters generally support the proposal to implement limited information disclosure procedures for the 700 MHz auction, though they differ on the disclosure of specific data elements. Some commenters suggest that the Commission should inform bidders of the license(s) or license block(s) for which an overlap occurs with other applicants, citing fundamental differences between the different 700 MHz license blocks and the particular needs of small and rural bidders to better identify those bidders interested in nationwide/open access licenses.¹⁸⁴ Verizon Wireless opposes disclosure of this information.¹⁸⁵ We find that revealing information on license blocks selected by competing applicants would be inconsistent with the goals of limiting information disclosure. Thus, we will not release information on licenses or license blocks selected until after the close of bidding.

148. Commenters also recommend releasing each bidder's upfront payment amount and initial bidding eligibility before the auction, on the grounds that this information would help small companies better gauge the level of competition.¹⁸⁶ Some entities also seek disclosure of an aggregate eligibility ratio after each round.¹⁸⁷ 4G Coalition advocates releasing the total number of active bidders and, for each license and package, the number of bids and amount of the bids after each round.¹⁸⁸ While these parties contend that release of this information would not facilitate anti-competitive practices and would not disclose bidder identities,¹⁸⁹ we disagree. As Frontline notes, release of bidder eligibility before the auction could be used by incumbents to block new entrants or for other strategic purposes.¹⁹⁰ Similarly, Verizon Wireless contends that release of this information weakens anonymous bidding.¹⁹¹ This information could potentially be used to discern the identities of individual bidders. Moreover, we are particularly concerned that release of such information could foster anticompetitive bidding activity, particularly in light of the use of reserve prices in this auction.

149. Verizon Wireless and MetroPCS urge the Commission to release names of auction applicants and provide access to the ownership information in applicants' short form applications.¹⁹² This information has been made publicly available in past auctions even where limited information procedures have been implemented.¹⁹³ We plan to continue to make available the names of applicants and their ownership information, as release of that information is necessary for other applicants to comply with the anti-collusion rules and does not undermine the purpose of our anonymous bidding procedures. To enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted

¹⁸³ 700 MHz Auction Public Notice at ¶¶ 14-15.

¹⁸⁴ Blooston Rural Carriers Comments at 4-5; MetroPCS Reply Comments at 2.

¹⁸⁵ Verizon Wireless Reply Comments at 3-4.

¹⁸⁶ US Cellular Comments at 3-4; RTG Reply Comments at 2.

¹⁸⁷ US Cellular Comments at 4; MetroPCS Reply Comments at 2-3; 4G Comments at 9.

¹⁸⁸ 4G Comments at 9. See also MetroPCS Comments at 8; MetroPCS Reply Comments at 2.

¹⁸⁹ MetroPCS argues, for example, that release of such information that would not disclose bidder identities will allow bidders to better discern market value and anticipate changes in the pace of the bidding. MetroPCS Reply Comments at 3.

¹⁹⁰ Frontline Reply Comments at A-4.

¹⁹¹ Verizon Wireless Reply Comments at 3.

¹⁹² Verizon Wireless Comments at 9; MetroPCS Reply Comments at 2.

¹⁹³ See, e.g., Auction 71 Procedures Public Notice, 22 FCC Rcd at 463-65, ¶¶ 109-114.

its initial review of applications to participate in Auction 73 and Auction 76, each applicant will receive a letter that lists the other applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant.¹⁹⁴

150. We adopt the proposals set out in the *700 MHz Auction Public Notice*. Thus, we will disclose after the conclusion of each round the amount of every bid placed and whether a bid was withdrawn.¹⁹⁵ More generally, we will disclose, after the conclusion of each round, all relevant information about all bids placed, withdrawn, or dropped except for the identities of the bidders performing the actions and the net amounts of the bids placed, withdrawn, or dropped. As in past auctions conducted with limited information procedures, for each license we will indicate the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, we will also release for each license the number of bidders that placed a bid on the license.¹⁹⁶ Furthermore, we will indicate whether any proactive waivers were submitted in each round, and we will release the stage transition percentage — the percentages of licenses (as measured in bidding units) on which there were new bids — for the round. In addition, after each round, bidders logged in to the FCC Auction System will be able to see whether their own bids are provisionally winning. We will provide samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

151. Several commenters argue that information about the initial auction results (for Auction 73) should not be withheld in the event that a contingent auction (Auction 76) must be conducted. MetroPCS, US Cellular and Frontline, for example, urge disclosure of initial auction results for blocks that meet their reserve prices before the contingent auction, claiming that such information may be necessary to meet Securities and Exchange Commission and other regulatory requirements, to allow bidders to communicate with financial institutions, and to facilitate network build-out.¹⁹⁷ Similarly, Verizon Wireless and MetroPCS favor allowing bidders to announce that they won licenses in a block that has met its reserve price if required by law or regulation.¹⁹⁸ These parties do not, however, cite any specific regulatory requirements that would compel such disclosures, and we are not aware of any such regulations. To the extent that any such requirements are related to winning bidders' payments, we note that if Auction 76 were to be held, winning bidders in Auction 73 of licenses in the A, B, C, or E Blocks will not be required to make down payments until after the subsequent bidding.¹⁹⁹ We find that premature disclosure to financial institutions, vendors, and others of identities of successful bidders in Auction 73 would undermine the purposes of our limited information procedures.

152. Regarding Auction 76 and the timing of information disclosure, we adopt our proposal not to release until after the close of bidding in both auctions (a) information on the winning bidders for licenses in blocks for which the reserve price was met in the first auction, (b) information on bidder

¹⁹⁴ The list will identify the Auction 73 applicant(s) by name but will not list the license selections of the Auction 73 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 that is needed to comply with section 1.2105(c), e.g., the identities of controlling interest in the applicant and of ownership interests greater than ten percent (10%), will be available through the publicly accessible online short-form application database. See below at ¶¶ 111-116.

¹⁹⁵ *700 MHz Auction Public Notice* at ¶ 15.

¹⁹⁶ For C Block licenses that are subject to HPB, the number of bidders that placed a bid on each license will include both bidders that bid on the license itself and on a package containing the license.

¹⁹⁷ MetroPCS Comments at 24-25; US Cellular Reply Comments at 3; Frontline Comments, Attachment at 22-23.

¹⁹⁸ Verizon Wireless Comments at 8; MetroPCS Reply Comments at 4.

¹⁹⁹ As discussed below, if there is a winning bidder for the D Block license based on the initial bidding, that winning bidder will owe its down payment (and final payment) for that license even if there is subsequent bidding for alternative licenses in any of the other blocks.

license selections and eligibility, and (c) any other information that may reveal the identities of bidders placing bids and taking other bidding-related actions on licenses in all blocks. For the D Block, however, in the event there is a winning bidder for the D Block license in Auction 73, we will make public before the close of bidding in a Auction 76 only such information as may be necessary to proceed with promptly facilitating the D Block winner's obligations to negotiate a Network Sharing Agreement with the national Public Safety Broadband Licensee in the adjacent spectrum block.²⁰⁰

153. Commenting parties also urge the Commission to allow applicants to "opt-out" of Auction 76 in order to be free of anti-collusion prohibition, so long as bidder certifies that its decision has not been based on discussion with other parties concerning auction strategy or post-auction market structure.²⁰¹ Yet, as Leap acknowledges, reversal of the Commission's determination on this issue would need to be addressed by full Commission.²⁰² As such, we cannot implement such a change in this proceeding.

154. *Other Issues.* We conclude in the rulemaking proceeding that the information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.²⁰³ When limited information procedures are not in effect for a particular auction, each applicant's selection of licenses has been publicly available through the Commission's online short-form application database. In Auction 73 and Auction 76, however, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its online database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with Section 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's anti-collusion rule permits.²⁰⁴

155. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction whether applicants in Auction 73 and Auction 76 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 73 and Auction 76, each applicant with a pending short-form application will receive a letter that lists the applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction 73 and Auction 76 applicant(s) by name but will not list the license selections of the Auction 73 and Auction 76 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 and Auction 76 that is needed to comply with Section 1.2105(c), e.g., the identities of

²⁰⁰ See *700 MHz Second Report & Order* at ¶¶ 444-454.

²⁰¹ MetroPCS Comments at 24-25; Leap Reply at 4-5; US Cellular Reply at 8-9.

²⁰² Leap Reply Comments at 4-5.

²⁰³ 47 C.F.R. § 1.2105(c)(1).

²⁰⁴ As discussed at greater length elsewhere in this Public Notice, other laws may prohibit particular communications regarding bids and bidding strategies. Nothing in the Commission's rules or procedures insulates applicants against liability for violating such laws, e.g., applicable anti-trust laws.

controlling interest(s) in an applicant and ownership interests greater than ten percent, will be available through the publicly accessible online short-form application database.²⁰⁵

156. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 73 and Auction 76. While applicants' license selection will not be disclosed until after Auction 73 and Auction 76 close, the Commission will disclose other portions of short-form applications through its on-line database and public notices.²⁰⁶ Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.²⁰⁷

3. Eligibility and Activity Rules

157. As discussed above, we will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 73.²⁰⁸ The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units listed in Attachment A. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during Auction 73; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175 for Auction 73. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license or package of licenses.

158. A bidder is eligible to bid on a package of licenses if it selected all the licenses in the package on its FCC Form 175 and has sufficient eligibility. The bidding units for a package are calculated by adding together the bidding units of the individual licenses that make up the package.

159. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

160. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. The bidding units associated with a given

²⁰⁵ For purposes of Section 1.2105(c), the term "applicant" includes all controlling interests, all parties with ownership interests greater than ten percent and all officers and directors of the applicant. 47 C.F.R. § 1.2105(c)(7).

²⁰⁶ *Auction No. 66 Procedures Public Notice* at ¶ 158.

²⁰⁷ 47 C.F.R. § 1.2109(d).

²⁰⁸ See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

license will be counted only once in a bidder's activity calculation for the round, even if the bidder places a bid on the license and a bid on a package containing the license. For example, consider two licenses, A and B, each having 10,000 bidding units. Assuming a bidder bids on license A as well as the package AB in a given round, the bidder's activity would be 20,000 bidding units, calculated as the sum of the bidding units of licenses A and B. Note that the bidding units for license A are not counted twice. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Bid Amounts" in Section IV.B.3., below).

161. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures (as set forth under "Auction Stages" in Section IV.A.4. and "Stage Transitions" in Section IV.A.5. below) have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 73. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.²⁰⁹

162. With package bidding in the C Block, it is possible that a bidder may have an activity level that exceeds its eligibility, since the FCC Auction System considers bids placed in previous rounds when determining the provisionally winning set. The procedure for determining provisionally winning bids is discussed in more detail in Section IV.B.4. below. If a non-winning bid placed in a previous round later becomes provisionally winning, the bidder will receive activity for the newly provisionally winning bid. When added to the activity for the bidder's provisionally winning bids from the previous round and its new bids – which were limited by the bidder's current bidding eligibility – the total activity may exceed the bidder's current bidding eligibility. If this occurs, the bidder's current bidding eligibility will not increase to accommodate the additional activity. In subsequent rounds, the bidder will not be permitted to place new bids if its total activity from provisionally winning bids exceeds its bidding eligibility.

163. MetroPCS argues that we should allow bidders limited additional eligibility so that they can continue to bid on licenses or packages that become provisionally winning in later rounds.²¹⁰ We find that allowing maximum eligibility to be increased in this way may provide an incentive for bidders to intentionally place bids that are likely to become provisionally winning in later rounds, so as to increase their eligibility outside of the usual pre-auction process that requires them to purchase eligibility with upfront payments. Thus, we do not modify our procedures as suggested.

164. Frontline proposes that we modify the activity rules to reduce the difference between the number of bidding units associated with the C Block licenses and the bidding units associated with the D Block license.²¹¹ It maintains that the C and D Blocks "are in many ways substitutes," but notes that since the C Block has a bandwidth of 22 MHz compared to 10 MHz for the D Block, the C Block has many more bidding units.²¹² Frontline contends that because of the activity rule, the effect of this difference is to harm bidders that alternatively bid in the C and D Blocks. It therefore favors the modification of the activity rules through the attribution of a total bandwidth of 22 MHz to the D Block. Frontline maintains that this would enable bidders to freely alternate between the C and D Blocks, increasing auction efficiency and revenues. Verizon Wireless criticizes this proposal on several grounds, including arguing that Frontline's proposal would depart from established auction practice and is inconsistent with the

²⁰⁹ See Section IV.A.6. "Activity Rule Waivers," below.

²¹⁰ MetroPCS Comments at 19.

²¹¹ Frontline Comments at 7-8.

²¹² *Id.* at 7.

reserve prices proposed by Frontline itself.²¹³ We decline to adopt Frontline's proposal. We find that our current method of determining bidding units, combined with our activity and eligibility rules, offer bidders adequate opportunities to change bidding strategies.

4. Auction Stages

165. In the *700 MHz Auction Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.²¹⁴ The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

166. Some commenters favor the addition of a third stage with either a reduced eligibility threshold (before the two proposed stages) or a higher threshold (after the two proposed stages). According to US Cellular, small and regional bidders need time "to acquaint themselves with the many new features and procedures" in Auction 73. Therefore, US Cellular proposes creating a new Stage One with a 60 percent activity threshold and moving the 80 percent and 95 percent activity thresholds to Stages Two and Three, respectively.²¹⁵ While MetroPCS and Frontline support adopting a 60 percent activity threshold for Stage One, Verizon Wireless opposes any minimum activity level decrease and instead proposes a Stage Three with a 98 percent activity threshold.²¹⁶

167. We find that adding a new initial first stage with a lower eligibility threshold is at this time unnecessary. When determining the bidding schedule, we need to balance the desirability of concluding the auction reasonably swiftly with the benefit in giving bidders sufficient time for placing bids during rounds and for analysis between rounds. We find no compelling reason to create a new first stage that requires only a 60 percent eligibility requirement. Such a lower activity requirement would unnecessarily prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. Establishing an 80 percent activity threshold to start the auction, and retaining the discretion to make changes as circumstances warrant represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction.

168. We likewise see no need to establish, at this time, a third stage with a 98 percent eligibility requirement, finding that a 95 percent threshold should be a sufficiently high activity requirement for the final stage of the auction. In past auctions, we established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter. Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders a little more flexibility in fulfilling their activity requirements during the final stage of the auction. Therefore, we decline to establish a 98 percent activity threshold at this time.²¹⁷ The Bureau has the

²¹³ Verizon Wireless Reply Comments at 12-17.

²¹⁴ *700 MHz Auction Public Notice* at ¶ 37.

²¹⁵ US Cellular Comments at 5; Frontline Reply Comments, Attachment 2; MetroPCS Reply Comments at 17-18.

²¹⁶ Verizon Wireless Comments at 4-5; Verizon Wireless Reply Comments at 4. Verizon Wireless asserts that a 98 percent eligibility stage would end the auction quicker than the amount of time to close Auction 66. Verizon Wireless Comments at 5.

²¹⁷ We declined a similar request by Verizon Wireless for a Stage Three 98% activity threshold in Auction 58. See "Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum (continued....)"

discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. We find that, for now, two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, we adopt the two stages as described in more detail immediately below.

169. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

170. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

171. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction 73.

5. Stage Transitions

172. In the *700 MHz Auction Public Notice*, the Bureau proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.²¹⁸ The Bureau further proposed that the Bureau would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue, other than those addressed in the "Auction Stages" section above.

(Continued from previous page) _____
Opening Bids, Upfront Payments and Other Procedures for Auction No. 58," *Public Notice*, 19 FCC Rcd 18190, 18216-17.

²¹⁸ *700 MHz Auction Public Notice* at ¶ 37.

173. We adopt this proposal for stage transitions. Thus, the auction will start in Stage One.²¹⁹ The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, add an additional stage with a higher activity requirement, not to transition to Stage Two, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.²²⁰

6. Activity Rule Waivers

174. In the *700 MHz Auction Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.²²¹ Commenters proposed two variations on our proposal regarding activity rule waivers. For the reasons described below, we decline to adopt these alternatives and adopt the proposed three activity rule waivers per bidder.

175. One commenter, 4G Coalition, advocates providing bidders with two additional activity rule waivers to allow more time for decision-making during the auction.²²² 4G Coalition suggests that the two additional waivers would provide bidders, especially those that are consortia, greater flexibility during the auction.²²³ Verizon Wireless opposes any additional activity rule waivers because, it argues, no clear connection exists between having additional waivers and decision-making.²²⁴ We agree with Verizon Wireless that the request for additional waivers does not demonstrate why the proposed three waivers are insufficient, or why consortia might have a greater need for flexibility than any other bidder. We are satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

176. Another commenter, Manti Telephone, proposes a limit on activity rule waivers for bidders that are closely affiliated.²²⁵ Manti Telephone expresses concern with bidders entering more than one entity in the auction in order to receive more than standard three activity rule waivers, allowing it to preserve bidding eligibility for later in the auction.²²⁶ Manti Telephone proposes a total limit of three activity rule waivers for all “closely affiliated applicants, i.e., under common control, applying for overlapping licenses.”²²⁷ Frontline disagrees with Manti Telephone, noting that, while affiliated bidders may get twice the number of waivers, they would use them twice as fast as a single bidder in rounds in which they were not bidding.²²⁸ We agree with Frontline that no clear advantage seems possible. We

²¹⁹ The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. See Section IV.A.7. “Auction Stopping Rules,” below.

²²⁰ When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

²²¹ *700 MHz Auction Public Notice* at ¶ 46.

²²² 4G Comments at 12.

²²³ *Id.*

²²⁴ Verizon Wireless Reply Comments at 5. Verizon Wireless also notes that consortia have participated in previous auctions with the standard three activity rule waivers. *Id.*

²²⁵ Manti Comments at 1-2.

²²⁶ *Id.* at 1.

²²⁷ *Id.* at 2.

²²⁸ Frontline Reply Comments at 4.

also add that entities are prohibited from submitting more than one application.²²⁹ This measure prevents bidders from entering multiple entities while permitting legitimate business plans that entail common control among more than one applicant.

177. Therefore, we adopt our proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a "proactive waiver") or applied automatically by the FCC Auction System (an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

178. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless (1) there are no activity rule waivers available or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

179. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.4. above). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

180. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

7. Auction Stopping Rules

181. For Auction 73, the Bureau proposed to employ a simultaneous stopping rule approach.²³⁰ A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

182. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 73:

²²⁹ See Section II. "Short-Form Application (FCC Form 175) Requirements," above.

²³⁰ 700 MHz Auction Public Notice at ¶¶ 28-30.

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license or package on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license or a package of licenses for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids, applies a proactive waiver, or withdraws any provisionally winning bids in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

183. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely, e.g., before bidders have had an adequate opportunity to satisfy any applicable reserve prices.²³¹ The Bureau noted that before exercising these options, it is likely to attempt to increase the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing the minimum acceptable bids.²³²

184. One commenter, 4G Coalition, advocates explicitly adopting an alternate stopping rule that would give bidders one final opportunity to place bids that would meet the reserve prices.²³³ 4G Coalition believes adopting this measure will curb any incentive by some to bid in such a way to avoid the reserves being met.²³⁴ Verizon Wireless opposes the 4G Coalition's proposal, given the "unique nature of this auction and the complexity of the eligibility management issues."²³⁵

185. We find that the stopping rules as proposed are appropriate for Auction 73. Our experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, Auction 73 will begin under the simultaneous stopping rule approach.

186. While we decline to adopt any of the alternate stopping rules at this time, the Bureau retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. We will not, however, employ the first alternative (i.e., Option 1) until the reserve prices have been met. This will allow bidders to continue to place new bids even if they are the provisional winning bidders. Bidders, therefore, will continue to have the opportunity to place bids until the reserve prices are met.²³⁶

²³¹ *Id.*

²³² *Id.*

²³³ 4G Comments at 10-11.

²³⁴ *Id.* at 11.

²³⁵ Verizon Wireless Reply Comments at 6, n.23.

²³⁶ There could be circumstances under which a bidder for C Block licenses or packages could not raise its own bid. This would occur if the bidder's activity exceeded its eligibility. See Section IV.A.3. "Eligibility and Activity Rules," above.

8. Auction Delay, Suspension, or Cancellation

187. In the *700 MHz Auction Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²³⁷ The Bureau received no comment on this issue.

188. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt the Bureau's proposed rules regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

189. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

190. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

191. 4G Coalition advocates limiting the number of rounds per day in the first phase (Stage One) of Auction 73.²³⁸ More than four rounds in the auction's early stage would, according to 4G Coalition, place "substantial strains on consortia's more deliberate decision-making processes."²³⁹ 4G Coalition, however, suggests lifting the limit for Stage Two.²⁴⁰ Verizon Wireless opposes limiting the number of rounds per day.²⁴¹ We agree with Verizon Wireless that 4G Coalition fails to demonstrate why consortia would be disadvantaged vis-à-vis other bidders unless Stage One had a maximum of four rounds per day. We add that 4G Coalition also does not provide any rationale why, if a limit were necessary to allow effective decision-making amongst consortia members, it would not hold true in Stage Two of the auction, particularly when the stakes are even higher. Therefore, we decline to adopt any limit

²³⁷ *Id.* at ¶ 31.

²³⁸ 4G Comments at 12.

²³⁹ *Id.* 4G Coalition asserts that bidding in Auction 66 demonstrates that four rounds per day in Stage One would not lengthen the overall duration of the auction or cause difficulty with auction closure. *Id.*

²⁴⁰ *Id.*

²⁴¹ Verizon Wireless Reply Comments at 5.